

# LEGISLATIVE AUDIT ADVISORY COUNCIL

## Minutes of Meeting February 19, 2014

A meeting of the Legislative Audit Advisory Council (Council) was held on Wednesday, February 19, 2014, in Senate Committee Room A-B of the State Capitol.

### CALL TO ORDER AND ROLL CALL

Senator Walsworth called the meeting to order at 1:34 p.m. and a quorum was present with the following members in attendance:

#### Members Present

Senator Mike Walsworth, Chairman  
Representative Hunter V. Greene, Vice Chairman  
Senator Robert R. Adley  
Senator Rick Ward III, Proxy for Senator Edwin R. Murray  
Representative J. Cameron Henry, Jr.  
Representative Dalton W. Honore'  
Representative J. Rogers Pope, Proxy for Representative Clay Schexnayder  
Representative Ledricka J. Thierry

#### Members Absent

Senator John R. Smith  
Senator Edwin R. Murray  
Senator Ben W. Nevers  
Representative Clay Schexnayder

### APPROVAL OF MINUTES

Vice Chairman Greene made a motion to approve the minutes for the January 23, 2014, meeting and with no objection, the motion was approved.

### EXTENSION REQUESTS

Ms. Joy Irwin, Director of Local Government Services for the Louisiana Legislative Auditor (LLA), presented the nonemergency extension requests for 90 days or less. Representative Greene moved to approve the extension requests on the 90 days or less list, and with no objection, the motion was approved.

Ms. Irwin presented the nonemergency extension request for greater than 90 days which only listed the Kennedy Center of Louisiana. Ms. Tonya Williams, Executive Director for the Kennedy Center of Louisiana, explained their reasons for requesting the extension. Senator Adley moved to approve the extension for Kennedy Center until March 31, 2014, and with no objection, the motion was approved.

### HOUSING AUTHORITY OF KENNER

Ms. Irwin explained that the Kenner Housing Authority's (KHA) audits for Fiscal Year Ended (FYE) June 30, 2012, and FYE June 30, 2013, have not been submitted to the LLA. Included in the Council's folders were letters from Mr. Richard Murray, Executive Director of East Baton Rouge Housing Authority (EBRHA) and Interim Executive Director of KHA, and Danny McCaskill, KHA's bookkeeper, providing an update on their financial and audit status.

Mr. Murray asked for an extension for FYE 2012 and 2013's audit until June 30, 2014. He had been recruited by the Housing and Urban Development (HUD) office in New Orleans to help KHA in lieu of HUD taking it over because it was in such a mess. He said the public housing and Section 8 programs were in trouble, so having to spend a lot of time getting KHA organized and functioning.

Representative Honore' asked if Mr. Murray's assistance with KHA would put the EBRHA at risk. Mr. Murray assured the Council that he has many experienced staff members to take care of EBRHA. By the end of the year he will recruit a new executive director and transition that person in rather than bring someone while still in disarray.

Senator Adley asked if the Inspector General (IG) found misappropriation of funds or just operational issues. Mr. Murray explained that the IG found some resources were given away because of miscalculations which must be paid back to HUD, but no deliberate misappropriations. Senator Adley asked that when the IG or Attorney General is investigating an agency, a representative should be present or provide a report showing their findings to help determine how bad the situation may be. Ms. Irwin clarified that it was the HUD IG, and not the State IG investigating the agency. Senator Adley asked that a letter be sent to the HUD IG for the results of their

investigation. Ms. Irwin said often the HUD IG issues a report after their investigation, which they have not released one yet. However, she spoke with a HUD investigator and they have a three person team assigned to the issues at KHA. The HUD monitoring team gave her a date that was not in line with the auditor's anticipated completion date. That led to the KHA being invited to this meeting to provide the status of the audit and an accurate completion date. Currently, the auditor and the fee accountant and Mr. Murray are all in agreement that June 30, 2014 would be the appropriate date for the extension.

Mr. Paul Andoh, CPA with Bruno and Tervalon, gave an update on the receipt of the documents from KHA. Senator Walsworth asked Mr. Andoh if he could have the audit for FYE 2012 completed by April 30, 2014, and the FYE 2013 audit by June 30, 2014. Mr. Andoh said April 30<sup>th</sup> would not be possible to address HUD's concerns and ensure a good audit that supports the opinion.

Representative Honore' asked about the HUD IG report. Mr. Murray answered that two employees left the KHA but had nothing to do with the compliance issues. He has had the KHA employees extensively trained and continues to train them to correct the issues. Vice Chairman Greene made a motion to grant the Kenner Housing Authority an extension on the FYE 2012 audit until May 31<sup>st</sup> and the FYE 2013 audit will be due June 30, 2013. With no objection, the motion passed.

Daryl Purpera, Legislative Auditor, pointed out that housing authorities are political subdivisions of the state, but their funds come directly from the federal government. Thus, the state has very little leverage to enforce the completion of audits, which is the reason that this problem occurs so often.

#### **FOLLOW-UP ON DEPARTMENT OF REVENUE--SEVERANCE TAX PAYMENTS--PERFORMANCE AUDIT**

Mr. Purpera said the Council asked the Louisiana Department of Revenue (LDR) questions in the December 19, 2013, meeting and requested they return with their responses. Ms. Nicole Edmonson, Director of Performance Audit Services, provided the finding on page 8 of the report that the Council questioned, "As required by state law, LDR paid companies approximately \$23.9 million in interest related to severance tax payment refunds during fiscal year 2009 through 2013." The Council asked LDR to find ways to decrease the number of refunds paid by working with the Department of Natural Resources (DNR) to change the program rules, and look at state law regarding the amount of interest they have to pay.

Mr. Jason DeCuir, LDR Executive Director, stated that operators for horizontal or deep wells are paying severance tax as they go through the process of applying for an exemption. When operators are ultimately granted the exemption, LDR refunds the severance taxes paid along with interest. LDR and DNR has spoken with the industry as they worked on a resolution and have made operational changes on how they administer the exemptions as they have done with other taxes. LDR will grant a certificate of good standing based on certain criteria to operators so they will not have to pay the severance tax while going through the horizontal well and deep well exemption status, so LDR will not have to refund it back with interest. Over the course of several years, interest paid has cost the state about \$23 million and believe they can see savings through the proposed operational changes. Robert Benoit, DNR Chief of Staff, added further explanation.

Representative Henry asked where the collected money is deposited. Mr. DeCuir said it is deposited into the state general fund. Representative Henry questioned if this will cause a cash flow problem for the state because the anticipated funds will not be coming in, even though eventually paid back. Mr. DeCuir answered that Greg Albrecht at the Legislative Fiscal Office may be the best to answer that question. These severance tax payments are paid monthly and later in the year all is refunded back, so the refund is probably anticipated, so assume this is factored into Greg Albrecht's forecast already. Also, the certificate of good standing would be a joint sign off by LDR and DNR before issued to the operator.

#### **FOLLOW-UP ON DEPARTMENT OF EDUCATION – LOUISIANA SCHOLARSHIP PROGRAM – PERFORMANCE AUDIT**

Mr. Purpera said the Council asked the Louisiana Department of Education (LDOE) questions in the December 19, 2013, meeting and requested they return with their responses.

Mr. John White, LDOE Superintendent, addressed Senator Nevers' questions about what the LDOE does to inform parents regarding academic outcomes on the program. He brought an example of the guide given for application available for the council. It lists the schools and shows all the information which is the same information as public schools – traditional public and charter public schools. Families and schools across the state have access to school performance scores of every school, and services provided at the school on the application process. They have nonprofit and governmental organizations that do outreach to parents specifically and across the state including recruitment fairs and such. LDOE is also required by law to publish an annual report which has detailed information about the program generally and about the schools in question. They publish the test results annually for the ILEAP test or ACT test for these schools. With respect to Representative Thierry's concerns about the early assessment of the kids, asking how do they know that learning is taking place for children in K-2<sup>nd</sup> Grade. Since the last LAAC meeting, LDOE surveyed all 104 schools that offer those grades, and 20 of those surveys are in process and 84 have been completed. It looks like 64 of the 84 schools do have a formal standard assessment for information purposes, gathering from the TerreNova's test and the Stanford's series of tests information on basic literacy. Some use the Dibels test, which is used in the public schools – charter and traditional public schools. LDOE does not test in grades K, 1 and 2, for purposes of



accountability for rating schools, and it appears that this is true in private schools as well. So most do have that information gathered through the same tests as public schools but not all, and some do not administer those types of assessments. About one quarter of those surveyed do not provide those assessments.

Superintendent White addressed Senator Murray's questions regarding the capacity review process, which goes to the heart of the LLA's issue. This year 46 out of the 114 participating schools will undergo a capacity review for next year to determine if a voucher school can take more children. LDOE will review the scholarship program tests and the nonpublic school process documentation as well as how many parents have applied for the school. In terms of academic performance and the role it will play in the review of the 46 schools as to whether they can take more kids or not, LDOE has established basic rules in terms of scores that will determine if they can take more kids. Superintendent White said LDOE took the LLA's suggestion and established a specific standard depending on the school size in terms of the number of kids participating.

Representative Pope expressed appreciation for the auditor's report, stating it is no secret that he is concerned about education. The state has expended a lot of taxpayers' money on scholarships. He understood that independent auditors were unable to complete the audits of all 118 schools, and asked why not. Superintendent White agreed with the findings of the auditor, but believes that the audits were completed in the terms of the law. However, they could have been completed better. The independent auditors reflected that they would have liked for the funds to have been broken out in more precise ways. LDOE agreed with that and already stipulated that as part of the guidance to schools, that they must break out their accounts to separate the scholarship dollars from their general funds, and if they do not do that, they will be subject to sanction per BESE's authority.

Representative Pope said LDOE has a responsibility to ensure these audits show proper accounting for public dollars. Mr. White said the law did not require the separation of the accounts, but it is clearly a better practice as pointed out by LLA, and has been added in BESE regulations. Representative Pope asked if LDOE has recovered the public funds given to the New Living Word School. Mr. White said that case has been referred to the Attorney General and the Department of Revenue for the standard revenue collection process.

Representative Pope said approximately \$36-40 million was appropriated for the scholarship program the past fiscal year. Mr. White explained that the legislature allowed an appropriation of up to \$43 million, and roughly \$36 million worth of tuition has been paid because the number of kids was less, so the difference was not spent. Representative Pope asked about how they measure the success of the program. Mr. White said most kids coming into the program were not in a tested grade. Also 86% of the kids in the program came from D or F rated schools, and of those kids, their proficiency rate hovered around half, and slightly below half for the overall group.

Representative Pope said if state funds will be expended for private parochial schools, they must be able to measure the students in the same way. Mr. White said they use the exact same tests and use the exact formula for rating the schools, and no other state in the country has that for their voucher program. Given that, even though 86% of the kids came from D or F rated schools, only half of the schools that had a scholarship cohort index rated at an F or lower. So as the schools get bigger and the kids get older, we will know more as more kids take the test. LDOE has established the same system of measurement and have a swifter set of consequences. In the traditional public school system, a school must be an F rated school for four straight years before the Recovery School District (RSD) takes it over. For the scholarship schools, if they get an F for one year, they cannot get new students. LDOE has already implemented the consequences for schools.

Representative Pope asked if kindergarteners at A or B rated schools are allowed to apply for a voucher school. Mr. White said any parent whose child is entering kindergarten may choose a scholarship school under the law. Representative Pope asked what percentage of the funds appropriated for scholarships are paying for kindergarten students. Mr. White answered that he was not certain but guessed about one quarter of the funds, and a very small percentage of that are kids from A or B schools because many parents move to those zones so as to attend A or B public schools. Representative Pope asked how long the program has been in effect. Mr. White answered that outside of New Orleans, the program has been in effect for two years.

Senator Adley questioned LLA about the comment in the report: "there are no legal requirements in place to ensure nonpublic schools that participate in the program are academically acceptable", refers to purely private or charter schools or both. Ms. Edmonson said it is referring to the schools participating in the program, that there are no legal requirements that they be academically acceptable. Senator Adley asked if this is only nonpublic schools at issue, and charter schools are okay. Ms. Edmonson said the nonpublic schools approved by BESE are the majority of the schools participating in the program, and does not know of any charter schools participating in the program during the scope of their audit.

Senator Adley explained he is discussing purely private, nonpublic schools by definition that the public picked them on their own initiative. He believes the parents have been willing to pay a whole lot more money for private schools which have their own guidelines in place and seems to be working. Ms. Edmonson said this program is called the Student Scholarship for Excellence Program, and there is an assumption by the public that if these schools are allowed to participate in the program, then they are academically excellent schools. The report states that right now there are no criteria that they need to be an A or B school as their public counterparts do to participate in this program. The majority of the schools during the time of the audit were all nonpublic schools.



Senator Adley asked if in lieu of doing normal audits to ensure an office is operating correctly or properly, is the LLA at the point of making policy decisions about how it should be done in lieu of what the law says should be done. He said he believes the auditor's office should be sure everyone is complying with the law, and if it is a policy issue, that is for the legislature to determine.

Ms. Edmonson pointed out the report contains a matter for legislative consideration because there are no legal requirements. She was not saying that there should be, and not saying that LDOE had done anything wrong, but the mission of LLA in part is to improve transparency in state government, and this is more of a transparency issue than a public policy issue. Senator Adley pointed out he has been highly involved in transparency, and appreciates the policy statement, but does not see any violation of the law. It would be at the legislature's discretion if they want to take the recommendation into consideration. Ms. Edmonson agreed and explained the report brought to light for many that the requirement was not in law, and the assumption that the schools in the program must be good.

Senator Adley provided some of the debate in the Senate about charter school, public schools and nonpublic/private schools, and they all agreed that by definition the charter school was the same as a public school. The private school would be a different issue because people got into private schools on their own initiative, and government's assistance was not needed to create demand on those schools. Ms. Edmonson pointed out the number of private schools that are participating in the program and the percentage of their student enrollment that are scholarship students. Four were brand new schools to the program, and people are asking now is how these schools are doubling their enrollment in the first year of the scholarship program. We need to look at the quality of these schools participating in the program. Parents assume that schools in the program must be good, but reassurances are necessary to show that they are making an informed choice.

Senator Adley agreed and asked Mr. White what are the guidelines used to ensure the quality of the newer and smaller schools that expanded greatly after the program was created. Superintendent White said that schools which are new to the entire program and have never taken a public school test that has been reported publicly for publicly funded kids – this is true for only the first year to the program. Ms. Edmonson agreed that their accountability system kicks in after the second year.

Superintendent White pointed out that a traditional public school run by the school board or a charter public school chartered by the state or a school board also has one year without data. School systems start literally dozens of new schools every year and do not require them to pass a test because unfortunately there is no data. They continued discussing the difference between testing in private and public schools, and when test results are available and what should be required from the voucher schools.

Senator Walsworth stated that it is a legislative matter whether they require private schools participating in the voucher program to be graded as the public schools. Legislators debated that several times and decided to not go down that road, so the issue is if there is any violation of law or where they can improve.

Mr. Purpera responded to Representative Henry's question if the LLA can do a full audit at any of the voucher schools saying that he cannot because the law does not allow it. When the voucher law was written, the audit that Superintendent White is talking about is done by independent CPAs for LDOE. So the LLA does not have the authority to follow those public dollars into the scholarship program. Representative Henry commented that since this has been brought to light, ideally a legislator can offer some legislation to address those concerns. Superintendent White commented that the separation of public and private funds is not required by law, but he agrees with LLA that it is very good practice.

Senator Adley said when this issue came up before it prompted him and Senator Murray to write letters to the BESE board that this particular law was passed on the basis of public funds being audited. They have a response from the BESE board basically saying that it was their responsibility to do that. He said there may very well be legislation to allow the auditor when there are public dollars involved to at least follow it. He agreed with Mr. White on the debate about quality and qualification and transparency, but not with giving public dollars to someone and not following it.

Mr. White said he could not take a position on that- positive or negative, but LDOE and BESE are doing as the law instructs regarding obligations and authorities. But it does not say anything about how we should interrelate with the LLA and he welcomes whatever instruction the law gives. Senator Adley asked if Mr. White would object to his filing bills to allow access for the LLA to follow the public dollars. Mr. White responded that the schools would probably have concerns about the process but they will always work with the LLA as instructed by the legislature. Senator Adley asked Mr. White to give his input on the bill because clearly do not want to hide any public money and treat it as any other public money given to other entities. Senator Walsworth suggested that the legislative auditor join in that meeting to draft the right legislation.

Senator Walsworth allowed for public comment. Sister Ann Middlebrooks, Assistant Superintendent for Schools in the Catholic Diocese at Shreveport, said it is about accountability in Catholic education. She presented their efforts to ensure accountability in education, and explained that testing in every academic year provides the most complete picture of educational progress. Catholic Schools also act upon the results, which is the most crucial part of accountability process. Sister Middlebrooks explained the teacher certification requirements. Catholic schools share the test results of scholarship students with their parents for required state



tests and also for the national achievement test called TerraNova. They share the test results with parents individually and diocesan test results are published through their Catholic news journal. They are very open and transparent about their academic growth and progress. The ultimate measure of accountability in Catholic education is that parents choose year after year to send their children. Competition demands accountability, and it is clear Catholic schools are highly accountable for student achievement. Senator Walsworth asked if they separate their accounting of voucher dollars. Sister Middlebrooks said they do note the scholarship tuition received.

#### **RAPIDES PARISH COLISEUM AUTHORITY – INVESTIGATIVE AUDIT**

Mr. Roger Harris, Director of Investigative Audit Services, explained that the Rapides Parish Coliseum Authority (the Authority) is a political subdivision of the state, with a nine member board that is supported by the Rapides Parish Police Jury. He provided a historical background on the creation and purposes of the Rapides Parish Coliseum (the Coliseum). Dan Daigle, Investigative Audit Manager, presented an overview of the investigative audit findings from the audit issued February 5, 2014.

Thomas Wells, Assistant District Attorney representing the Rapides Parish Police Jury and the Authority, commented that this misappropriation was self-reported, and the Authority requested the investigation. The District Attorney (DA) has received the audit report, and the sheriff has been investigating since March of 2013, so action will be taken by the criminal division of the DA's office. Mr. Wells said the employee who stole the money has not been charged yet, because waited for the auditor's report and the sheriff's office was wrapping up their report.

Senator Walsworth asked if they put safeguards in. Mr. Jimbo Thiels, Chairman of the Authority, stated that they have implemented the needed policies and audits to prevent further internal theft. Representative Honore' asked what led to the employee resigning right away. Mr. Thiels said the employee had poor job performance issues, and also the Authority found insufficient funds to pay a performer which led to them to investigate further. Mr. Harris said his staff met with the Authority members and police jury and believe they have a good handle on the situation.

#### **LOUISIANA PUBLIC DEFENDER BOARD – PERFORMANCE AUDIT**

Mr. Purpera said the purpose of the performance audit issued on February 12, 2014, was to determine if the Louisiana Public Defender Board (LPDB) was providing adequate or proper oversight over the Capital Defense Services that are being delivered by the judicial districts.

Ms. Nicole Edmonson provided the background on the LPDB created in 2007 which is responsible for the supervision, administration and delivery of a statewide public defender system for defendants who are unable to afford an attorney. The audit objective was to determine if LPDB provides oversight of capital defense services delivered by judicial district offices and nonprofit organizations in accordance with state law. Ms. Emily Wilson, Performance Audit Manager, summarized the report and explained the findings and recommendations.

Senator Walsworth said agencies have not always received their portion of the court costs. He asked if there is a mechanism to clearly see the dollars due to public defenders or criminal courts, etc. Ms. Edmonson said that is something her staff is looking into right now to see how what process is in the state to make sure that court costs, fees, and fines are being collected. She is working with the Supreme Court and in contact with all the 42 districts to see their current processes. They are not finding one consistent process, and some districts do better than others. The process for collecting the fees is a very passive process, so working with the Supreme Court and districts to come up with recommendations to fix that process to make sure collecting all due. Then once all is being correctly collected, they need to determine if the money is going where it is needed. The LPDB is not the only entity that relies on this local revenue. During the LPDB audit, her staff realized the issues and started the subsequent audit to provide recommendations to the districts on collections.

Mr. Purpera said some districts are doing their best but feel they will be penalized if they collect all their funds, because they will get less from the state. Representative Honore' asked about the turnover rate, and when the attorney runs out of time. Ms. Wilson said the issue was not that the attorneys were not tracking their time, but they were not separating their time representing a capital case and noncapital cases. From a management perspective for the board, it is important to know how much they are spending their money on each type of service provided, to know if adequately funded, or if costs are increasing or decreasing. Representative Honore' asked if any districts are doing well. Ms. Edmonson said one district is a best practice example for the others of how to collect court fees, and briefly explained the results seen.

Representative Thierry said once the court appoints a public defender for the defender, an indigent defender fee may be required. She asked if there is a state law mandating fees or does it vary by district. Ms. Edmonson said the fee is \$40 according to the LPDB. Representative Thierry asked if a person is truly indigent, and cannot pay the fee, is the state still obligated to provide those services. Ms. Edmonson said the fee is accessed but if the defender cannot pay it, then the district is not receiving the money. As per LPDB and reports reviewed, Louisiana is one of the few states that rely on that kind of funding for our districts, which is the reason for the matter for legislative consideration.



Mr. James "Jay" T. Dixon, Jr., State Public Defender and representative of the LPDB, thanked the legislative auditor because of how difficult to audit this unique office. He provided his background and admitted it was difficult to look at and digest all the information for this report on capital defense which is very complex litigation. He said they have taken this audit as a road map and guide on how to proceed. They have capital trial standards ready for the board to vote on, and prepared timesheets for the capital district defenders in local districts so they can properly determine capital defense expenses. He further outlined all the improvements and changes implemented as a result of the audit to improve their office.

Senator Walsworth asked who makes all the decisions. Mr. Dixon said the board does, and he serves basically as the executive director. They have sensitive and privileged information that they have to protect so almost a requirement to be separate from anyone else, similar to a law office. They discussed the capital outlay and expenses of the office.

Senator Walsworth asked how they determine how much each parish gets paid. Mr. Dixon said the District Funds Available (DAF) is a complex formula to calculate how much is given to each district. They have an hour course explaining DAF for new committee members. The parishes that do not receive money are self-sufficient and have enough money that they do not need funds from LPDB. He gave the example of Jefferson Davis parish which has a large stretch of I-10 which accounts for quite a bit of ticket income. Other districts are dependent on the DAF.

Senator Walsworth asked if they have discretion on the formula, or if a standard formula. Mr. Dixon said they try to keep consistent but have to take other factors into consideration, such as rent cost. He does not believe that a district should be penalized when they go to their local politicians or government and able to get financial assistance to help their local office. Mr. Dixon said they track expenditures and income for every parish monthly to see patterns and if problems are seen can tinker with the formula if necessary. Representative Honore' asked if the board is only lawyers. Mr. Dixon said the vast majority are lawyers, but also have social workers and various other professions.

Senator Walsworth said they would like to have the chairman come back since that is the policy board, and will give them a couple of months before bring the chairman to a meeting. Local entities have contacted some legislators about the funding being cut, so further discussion would be warranted. Mr. Davis said Judge Burns is the interim board chairman, but glad to come back in the future.

**OTHER BUSINESS**

Mr. Purpera provided an update on the fiscal administrators in the Town of Jonesboro, Town of Gibsland and the Town of Richwood. He said all three are successfully making improvements.

**ADJOURNMENT**

Representative Greene made the motion to adjourn and with no objection, the meeting adjourned at 3:24 p.m.

\*\*\*\*\*

APPROVED BY:



\_\_\_\_\_  
SENATOR MIKE WALSWORTH  
CHAIRMAN



\_\_\_\_\_  
DARYL G. PURPERA  
SECRETARY

9-30-14

\_\_\_\_\_  
DATE